



WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Environment

Clearinghouse Rule 10-059

Relating to the registration and reporting process for water withdrawals and affecting small business.

Submitted by Department of Natural Resources.

August 19, 2010 Referred to Committee on Environment.

September 29, 2010 **PUBLIC HEARING HELD**

Present: (5) Senators Miller, Jauch, Wirch, Kedzie and Olsen.
Absent: (0) None.
Excused: (0) None.

Appearances For

- Eric Ebersberger, Madison — DNR
- Kristy Rogers, Madison — DNR

Appearances Against

- Tim Winkel, Elton — Silver Moon Springs
- Ron Johnson, Wasburn — Wisconsin Aquaculture Industry

Appearances for Information Only

- Jordan Lamb, Madison — Wisconsin State Cranberry Growers Association

Registrations For

- None.

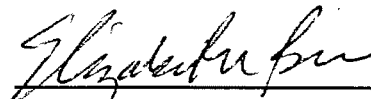
Registrations Against

- Peter Fritsch, Polmyra — Rushing Waters Fisheries
- Bill Isermann, Evansville — Rushing Waters Fisheries

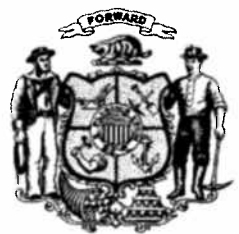
Registrations for Information Only

- Merika Kummel, Madison — herself

October 19, 2010 No action taken.



Elizabeth Bier
Committee Clerk





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July 7, 2010

Ms Kristy Rogers
Wisconsin Dept. of Natural Resources
Bureau of Drinking Water and Groundwater
P.O. Box 7921
Madison, WI 53707

VIA U.S. MAIL AND EMAIL
Kristy.Rogers@wisconsin.gov

RE: Wisconsin State Cranberry Growers Association Opposition to Proposed Wis.
Admin. Code § NR 856, Statewide Water Use Registration & Reporting

Dear Ms. Rogers:

I am writing on behalf of the Wisconsin State Cranberry Growers Association (WSCGA) to express our opposition to proposed Wis. Admin. Code § NR 856, relating to water use registration and reporting.

Background

WSCGA represents 160 of the Wisconsin's cranberry growers who grow more than 85% of the state's crop. In fact, cranberries are the state's largest fruit crop and Wisconsin leads the nation in cranberry production. It is estimated by the University of Wisconsin that our cranberry industry provides more than 5,000 jobs for Wisconsin residents and has a \$350 million impact on the state's economy.

As you know, cranberry production is highly water dependent. The cranberry vine is a wetland plant that needs a wetland environment to survive. Growers generally rely on surface waters for irrigation and, in many cases, they have created reservoirs, impoundments and complex water management systems to supply water for these uses. Groundwater or high capacity wells may be used, but only for supplementing surface water sources. Cranberry growers rely on water for a number of irrigation uses:

- Sprinkler irrigation is used to protect vines from frost and to provide the water needs of the plan throughout the growing season from April through October;
- Flood irrigation is used to protect the plants from freezing during severe cold weather in the early spring and late fall;

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- Flood irrigation is used to protect the plants from freezing during severe cold weather in the early spring and late fall;
- Flood irrigation is used to protect the vines from desiccation over the winter;
- Flood irrigation may be used for pest control in the late spring; and
- Flood irrigation is also used for harvest in the fall.

As a result, Wisconsin cranberry growers have a vested interest in any regulations that affect water use.

Opposition to NR 856

Proposed NR 856 implements the requirement under Wis. Stat. § 281.346(3) for a statewide water use registration and reporting system for those water users with the capacity to withdraw more than 100,000 gallons per day in any 30-day period statewide. We have the following concerns with this proposed rule:

1. Lack of Public Records Protection and Lack of Security for Food Supply Sources

Department staff has indicated a desire to put the information that is collected under the NR 856 statewide registration and reporting system into an online database that may be accessed by the public via the Internet.

While the rule does contain some protection against public records requests related to collected registration information, we do not believe that the protection is adequate for those engaged in food production.

Under proposed, NR 856.15, "Open Records Requests," the Department states that, "The locations of withdrawals and diversion are sensitive information that may impact domestic security." In addition, this section states that because of that security risk, "Open records requests ... that request information on the locations of withdrawals or divisions may be subject to greater scrutiny ..." and that the Department may request additional information from the person making the request. We believe that requests for locational information related to food production and processing sources must be strictly limited in order to provide adequate security protection.

Accordingly, we request that the Department:

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- Amend NR 856 to include a prohibition against posting any water use registration or reporting information on an Internet-accessible database if that information will disclose personal information about a water user or water system owner, will provide information about commodity-type, or will provide any information that reveals the withdrawal's location, the diversion's location or any specific locational information related to the withdrawal, diversion or discharge. Providing this information on a publicly accessible Internet database poses risks for water use associated with agricultural production and food processing with regard to safety of the food supply.
- Amend NR 856 to further tighten the open records request protections for information collected from water users who are engaged in production agriculture and food processing in order to ensure that food supply safety is maintained when such information is disclosed by the State of Wisconsin.
- Request an evaluation of the proposed statewide water use registration and reporting system by the National Center for Food Protection and Defense (NCFPD), which is housed at the University of Minnesota, in order to assess potential risks that disclosure of this information could pose to food supply safety, commodity supply chains and food distribution.

2. Lack of Guidance with Regard to Measurement of Flow-driven Surface Water Withdrawals and Recycled Water

The provision in NR 856 that requires the reporting of monthly "withdrawal" volumes to the Department (*see* NR 856.30) will be very difficult for Wisconsin cranberry growers with which to comply.

First, there is not a system for measuring irrigation or flood water that is withdrawn using a flow system. In order to move water into a cranberry bed for irrigation or harvest flooding, barriers on ditches adjacent to the beds are removed, allowing water to flow into the beds. There is not a system, pump or device that can measure this flow.

In addition, once the water is used in the beds, it is *returned to the source*. In fact, some growers have a completely closed water system, which means that they use *and recycle* the water that they withdraw for irrigation and flooding within a system of their own reservoirs. How should that reused water be measured or accounted for under this rule?

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We understand that the Compact statute and proposed NR 856 focus on reporting the amount of water “withdrawn,” but, in that sense, this rule will not provide a measurement of water that is actually “used” or “consumed.” In the case of water used in cranberry production, often the same water that is withdrawn from a reservoir is reused repeatedly on multiple beds before it is ultimately *returned* to the reservoir. How would this water use be reported under this rule? Is each use a withdrawal? Is it a “withdrawal” at all when the water is returned to the source?

Finally, there is an expense associated with producing the requested reporting information under NR 856 because measuring water withdrawn using flow systems is challenging. If modeling or if actual water measuring is required to provide estimates of monthly volumes, then this rule will be extremely expensive with which to comply.

Accordingly, we ask that the Department: (1) clarify how cranberry farmers, who use and recycle the water withdrawn from a surface water using a flow system, can measure their monthly water volumes; (2) explain how those monthly volumes will account for water that is recycled and reused; and (3) provide farmers with an estimate of how it will cost to measure these volumes when flow systems are used. (Note: The fiscal note associated with this rule proposal does not address these costs, as it appears to assume that all withdrawals are made with pumping equipment.)

3. Request for Information Unrelated to the Great Lakes Compact

Two of the items that an applicant must provide as a part of the water use registration under this draft rule include: (a) “The federal employer identification number [FEIN] of the owner, if applicable”; and (b) “[a] map showing the location of the property or public water supply, sources and discharges.” NR 856.30(4)(b) and (k). Neither of these items is required under the Great Lakes Compact statute. *See* Wis. Stat. § 281.346(3)(b).

Requiring a registrant to provide a map showing the location of the property or public water supply, sources and discharges, is unnecessary. This requirement does not provide any additional locational information than is already collected under other sections of the required registration. Providing a map will only entail additional expense and paperwork for the registrant without providing any additional information to the Department. We ask that this requirement be deleted from the draft rule.

The collection of an owner’s FEIN is also not one of the enumerated requirements for the statewide water use registration form as delineated by the Compact statute. *See* Wis. Stat. § 281.346(3)(b)1. – (b)10. In fact, the Compact statute actually prohibits the

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Department from collecting any additional information on this registration form unless it is "related to the purposes of the compact." See Wis. Stat. § 281.346(3)(f).¹ It is unclear how the collection of an owner's FEIN is related to the administration of the Great Lakes Compact. Therefore, we request that this requirement be deleted from proposed NR 856 as it is unrelated to the purposes of the Compact.

Conclusion

For the reasons stated above, we are opposed to proposed NR 856 and we respectfully request that these rules be amended to address our concerns. If you have any questions about the concerns expressed above, please contact me at (608) 252-9358.

Sincerely,

DEWITT ROSS & STEVENS s.c.

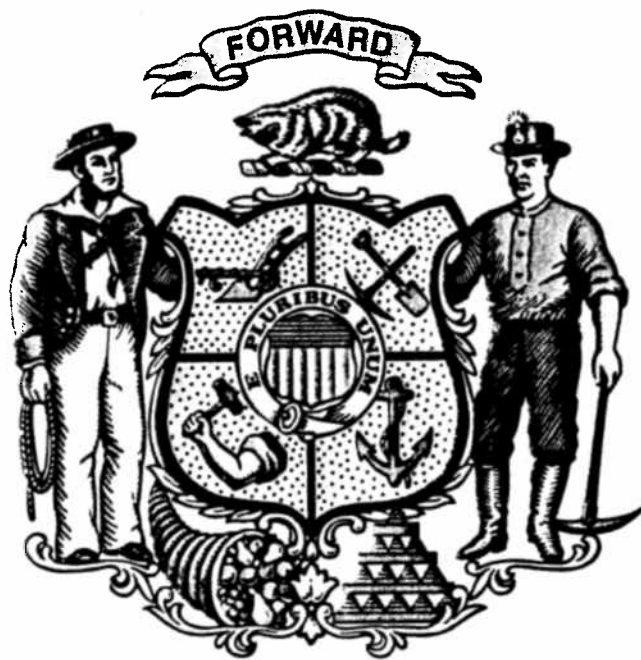


Jordan K. Lamb

JKL:jkl

cc. Tom Lochner, Wisconsin State Cranberry Growers Association (*via email only*)

¹ "The department may require additional information under par. (b) 10. or (e) 2. only if the information is related to the purposes of the compact." Wis. Stat. § 281.346(3)(f).



**State of Wisconsin
Department of Natural Resources**

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Board Order No.:	DG-25-10
Clearinghouse Number:	CR10-059
Subject of Rules:	Water Use Registration and Reporting
Date of Transmittal:	August 18, 2010

Send a copy of any correspondence or notices pertaining to the rule to:

**Linda Haddix
Department Rule Coordinator
101 South Webster, LS/8
P O Box 7921
Madison, WI 53707-7921**

**An electronic copy of the proposed rules submittal may be obtained by
contacting: Linda.haddix@wisconsin.gov**

REPORT TO LEGISLATURE

NR 856, Wis. Adm. Code Water Use Registration and Reporting

Board Order No. DG-25-10
Clearinghouse Rule No. 10-059

Basis and Purpose of the Proposed Rule

NR 856 Water Use Registration and Reporting is being proposed to further define and clarify new statutory requirements (s. 281.346, Stats.) for statewide registration and reporting of water withdrawals and diversions of water from the Great Lakes Basin. The rule was triggered by the adoption of 2007 Wisconsin Act 227. The rule provides specific processes and methods for measuring, registering, and reporting statewide water withdrawals and diversions of water from the Great Lakes Basin.

Summary of Public Comments and Modifications Made

Information on the proposed rule was posted on the department website on June 2, 2010 and information was sent to approximately 620 people using GovDelivery on June 3, 2010. The public comment period closed on July 7, 2010. The department received public comments from 17 individuals and organizations. All of the comments, along with the department's response are included as Attachment 1.

There were six comments related to s. NR 856.15, "Open Records Requests". The concerns centered on how the department would release location and personal information about registered withdrawals. The comments were from two perspectives. One perspective asked that the rule provide further protections for this information and a second perspective asked the department to add language that would allow for the release of enough of the information to reasonably assess impacts. The department made several changes to the rule language based upon the comments. The changes provide additional guidance for protecting information that may impact domestic security while preserving the state's public policy in favor of the release of public records.

The department made several modifications to the rule based upon comments concerning the information required for registration and reporting. The department eliminated the requirement to submit the federal employer identification number and added a requirement to annually submit an estimated volume of withdrawal for each water use.

Three groups submitted comments concerning the methods for measuring withdrawals. The department made several changes to the rule to make it clear that water withdrawn and then re-used was not to be included in the calculation for the monthly volume of withdrawal.

The department also made additional changes to the rule based upon a number of general comments including language clarifications and a correction to the applicability section.

Department staff met with the Wisconsin State Cranberry Grower's Association (WSCGA) on July 20, 2010 to discuss their concerns with the rule and potential resolutions. Department staff will continue to work with the WSCGA over the next several months to develop tools to assist them with measuring their withdrawals. The department could not, however, alleviate WSCGA's concerns related to protecting withdrawal location information from public open records requests. The rule was modified to the extent possible to afford greater protection to the location information while still meeting Wisconsin's open records policy. However, the department does not have the statutory authority to provide a blanket exemption against the release of the location information.

Department staff also spoke to the Wisconsin Aquaculture Association (WAA) on July 22, 2010 about their concerns. The department will continue to work with the WAA and other groups to provide training and assistance in measuring withdrawals.

Appearances at the Public Hearing

Five hearings were held to solicit comments. The hearings were held jointly with the hearings for NR 850 Water Use Fees and NR 852 Water Conservation and Water Use Efficiency. All of the hearings were at 6:00 p.m. The first hearing was in Milwaukee on June 28, 2010. The hearings in Green Bay and Ashland were conducted together using videoconferencing on June 29, 2010. The final two hearings in Wausau and Madison were also conducted together using videoconferencing on June 30, 2010. Department staff who assisted at the hearings included Eric Ebersberger, Dino Tisoris, Kristy Rogers, Steve Elmore, Shaili Pfeiffer, and Judy Ohm. There was low participation at the hearings with a total of 24 participants. Eighteen people registered with two people indicating in support, three in opposition, and seven as interest may appear. Three persons provided oral comments. Most participants at the hearing were primarily interested in how the rules would impact their operations. The following table lists the registered participants at the hearings.

Hearing Participant	Oral Statement	Position			
		In support	In opposition	As interest may appear	None indicated
Patrick Harrington – Representing Wisconsin Rural Water Association (WRWA)					X
Dan Peplinski				X	
Mike Hahn – Representing Southeastern Wisconsin Regional Planning Commission		X			
Ed Glatfelter – Representing Alliance for the Great Lakes	X			X	
Kenneth Graves – Representing Georgia Pacific				X	
Randy Kraemer				X	
Heidi Schmitt Marquez		X			
Dean Freeberg					X
Trevor Petermann				X	
Julie Maas					X
Eric Van Laanen – Representing WRWA					X
Edward Hendzel – Representing WRWA					X
Mary Vendiola – Representing Midwest Environmental Advocates	X			X	
Ed Morse – Representing WRWA					X
Darrin Pope – Representing Vierbicher				X	
Tom Lochner – Representing Wisconsin State Cranberry Growers Association	X		X		
Jeff LaBelle			X		
Andrew Aslesen – Representing WRWA			X		

Changes to Rule Analysis and Fiscal Estimate

None.

Response to Legislative Council Rules Clearinghouse Report

The department made all changes recommended by the Legislative Council Rules Clearinghouse. The following addresses the questions raised by the Clearinghouse. The department added language to s. NR 856.11 to include persons who propose to increase the capacity of a water supply system or public water supply and added s. 281.343(4) and s. 281.346(7) to the rule preface under number 2, "Statutes Interpreted". Section 281.343(4) requires the department to develop a water resources inventory that contains information on all diversions. The department is requiring existing diverters to register to obtain the necessary information for the required water resources inventory. The statutory authority for the exemptions listed in s. NR 856.11 is in s. 281.346(7). In s. NR 856.21(1)(b), the word "and" should not be replaced by the word "or". The required information is required for both the owner and operator. The department also added language to NR 856.22(2)(a) to clarify the phrase "reduced in size permanently".

Final Regulatory Flexibility Analysis

The proposed rule does not have a significant economic impact on small businesses. This rule will affect small businesses that supply their own water with water supply systems that have the capacity to withdraw over 100,000 gallons per day. Small businesses, like other entities that are affected by this rule, will have to determine the amount of water used on a monthly basis and report that water use annually. Small businesses that receive water solely from a public water supply will not be impacted by this rule. The registration, withdrawal measurement, and reporting requirements are straightforward and can be accomplished by most individuals with no specific professional background.

Attachment 1 – Summary of Public Comments

PUBLIC COMMENTS

OPEN RECORDS REQUESTS

1. The Farm Bureau Federation is ... "concerned about the proprietary information that is collected being used for other purposes". The Bureau requested that the open records request section of the rule be strengthened to protect individual businesses.
2. From the Wisconsin Cranberry Growers Association: *Amend NR 856 to include a prohibition against posting any water use registration or reporting information on an Internet-accessible database if that information will disclose personal information about a water user or water system owner, will provide information about commodity-type, or will provide any information that reveals the withdrawal's location, the diversion's location or any specific locational information related to the withdrawal, diversion, or discharge. Providing this information on a publicly accessible Internet database poses risks for water use associated with agricultural production and food processing with regard to safety of the food supply.*
3. From the Wisconsin Cranberry Growers Association: *Amend NR 856 to further tighten the open records request protections for information collected from water users who are engaged in production agriculture and food processing in order to ensure that food supply safety is maintained when such information is disclosed by the State of Wisconsin.*
4. From the Wisconsin Cranberry Growers Association: *Request an evaluation of the proposed statewide water use registration and reporting system by the National Center for Food Protection and Defense, which is housed at the University of Minnesota, in order to assess potential risks that disclosure of this information could pose to food supply safety, commodity supply chains and food distribution.*
5. From the Community of Environmental Groups: *Because of domestic security concerns regarding the location of withdrawals and diversions, NR 856.15 allows the Department to request additional information from the public when making an information request, and to place conditions on the use of, or change the format of location data provided to the public. While we recognize that the location of withdrawals and diversions can be sensitive, knowledge of the location of withdrawals and diversions is critical for the public to understand the impacts on natural resources. In order to ensure the public's ability to have that understanding, NR 856.15(3) should include the following sentence at the end: "The department shall explain its reasons for why conditions or special formats are necessary to protect the public's interest in domestic security in its response to the requester. Conditions on use, or special formats shall not prevent reasonable assessment and understanding of the impacts of withdrawals and diversions on natural resources."*
6. From the Community of Environmental Groups: *The rule should require that the water withdrawal and use data required to be reported by NR 856.30 (2) be placed into a state-wide database system accessible to the public. This will provide the additional benefits of greater transparency, enhanced public engagement, and heightened water user compliance with program objectives.*

Department Response: The new registration and reporting statute [s. 281.346(3)(cm), Stats.] gives the department the authority to consider domestic security concerns when determining if information relating to the locations of withdrawals and diversions may be released to the public. This authority must be balanced with Wisconsin's policy on public records that "...all persons are entitled to the greatest possible information regarding the affairs of government" and there is "a presumption of complete public access..." (s. 19.31, Stats.).

The department made several changes to the language in s. NR 856.15 based upon the submitted comments to provide additional guidance for protecting information that may impact domestic security while preserving the state's public policy in favor of releasing public records. Individuals also have the option to request confidentiality of their records following the process under s. NR 2.19.

The changes to s. NR 856.15 also include a requirement for the department to annually report water use data in an easily accessible format. The easily accessible format may or may not include access in a database depending on cost and security issues and will not include personal information other than a person's name or location information at a scale more detailed than the public land survey section level.

REGISTRATION AND REPORTING INFORMATION REQUIREMENTS

1. The Farm Bureau Federation ... "believes that the information being collected under NR 856.20 is too site specific and too detailed for the needs of the department" and suggested that more general information be collected from the responsible party.
2. The Wisconsin State Cranberry Growers Association expressed concern with the collection of the federal employer identification number and a map showing the location of the property or public water supply, sources and discharges as part of the registration. The Association asked that the amount of information that needs to be provided for both registration and reporting be simplified and reduced to make the rule easy for farmers to comply with and that both the requirement to supply the federal employer identification number and map showing the location of the property be deleted from the rule because they do not relate to purposes of the compact. The Association stated that providing a map entails additional expense and paperwork for the applicant and it does not provide additional information that isn't already required.

Department Response: The department eliminated the requirement to submit the federal employer identification number in s. NR 856.20(4). This requirement was originally included to facilitate delinquent fee collections. The department did not make any other changes to the required information. The information requirements in the rule are consistent with the information requirements set forth in the statute [Wis. Stat. s. 281.346(3)]. The rule requires that location information be submitted in the form of a map. Department staff has found that requiring a map provides the most accurate location information compared with requiring public land survey information or global positioning system coordinates. By early next year, withdrawers will be able to register electronically using the Internet. The department's Internet based registration system will collect location information through a map based tool. Users of the online system will not have to supply a map but will instead use the online tool to identify the needed location information.

3. From the Community of Environmental Groups: *Persons required to register under this rule must include in registration information the uses made of the withdrawn water, and they must amend their registration whenever there is a change in use. This registration information would seem to require water use only by type of use and not to require the quantity of water uses. The only water use quantity required to be reported annually by the rule is consumptive use. That limited amount of water use information is insufficient for effective state water use management. Water use volumes reported by broad use categories is commonly tracked by public water supplies who report this information annually to the Public Service Commission under Water Operating Revenues – Sales of Water using the water use categories: residential, commercial, industrial and public authority uses. The following amendments are suggested to NR 856.30 Measurement and Reporting Requirements:*

(1) Any person registered under this chapter shall determine the monthly volume of water withdrawn from the property or public water supply, or the monthly volume of water diverted, and the volume of the uses made of the withdrawn and diverted water, using methods and procedures set forth in s. NR 856.31.

(2) Any person registered under this chapter that makes a withdrawal that averages 100,000 gallons per day or more in any 30-day period, or diverts any amount of water, shall annually report to the department the monthly volumes of the withdrawal or diversion, and the volume of the uses made of the withdrawn and diverted water. Reports shall be submitted to the department in the manner prescribed by the department by March 1 of every year and shall contain the following information about the previous year's withdrawals:

(f) The volume of the uses made of the withdrawn and diverted water.

Department Response: The department has modified the annual reporting requirements in s. NR 856.30(2) to additionally require the submittal of the estimated volumes of each use made of the withdrawn

water. The Public Service Commission also collects more detailed water use information for public water systems that may be used for greater analysis on water use.

DEFINITION OF WITHDRAW AND WITHDRAWAL MEASUREMENTS

1. The Wisconsin Aquaculture Association along with several of their members including Linda Krepsky, Tad Storm, and Herby Radmann provided comments that they do not believe that aquaculture is a withdrawal. They state that the ... "activity of aquaculture occurs within the water, it does not "take" nor does the process of "taking" occur". The Association suggests that the rule define aquaculture as not being a withdrawal.
2. The Wisconsin State Cranberry Growers Association expressed concerns with the methods and costs associated with measuring withdrawals. They asked the department to ... "(1) clarify how cranberry farmers, who use and recycle the water withdrawn from a surface water using a flow system, can measure their monthly water volumes; (2) explain how those monthly volumes will account for water that is recycled or reused; and (3) provide farmers with an estimate of how it will cost to measure these volumes when flow systems are used. (Note: The fiscal note associated with this rule proposal does not address these costs, as it appears to assume that all withdrawals are made with pumping equipment.)"
3. The Aggregate Producers of Wisconsin and Wisconsin Transportation Builders Association expressed concerns with how withdrawals are measured and asked that ... "only the first gallon of water withdrawn as a part of an aggregate wash operation that recycles that same gallon be counted..." for the purpose of reporting.
4. The Aggregate Producers of Wisconsin and Wisconsin Transportation Builders Association also asked that the registration amendment requirements be ... "broad enough to avoid triggering a registration amendment..." for portable wash plants and mining sites. The locations of the ponds, wash plants, and discharge locations can change with each "set-up".

Department Response: "Withdraw" means to take water from surface water or groundwater [s. 281.346(1)(y), Stats.]. When someone withdraws water it is taken out of or redirected from its natural course making it unavailable for other purposes. In-stream uses of water are not considered withdrawals, nor is the temporary impoundment of water that does not redirect water from its natural course. Some older aquaculture facilities, for example, are constructed directly in a natural spring pond or stream channel. The water use for aquaculture at these facilities would not be considered withdrawals. The department will work with each facility to determine if a facility has a withdrawal or would be classified as an in-stream use.

The department added language to s. NR 856.31 to clarify that water that is reused on a property is not to be included in the monthly volumes of withdrawal. The department will work with all industries including cranberry growers, aggregate producers, and aquaculture operations to develop a consistent approach for measuring withdrawals versus water reuse. The department also modified the rule language in s. NR 856.21 to allow registration amendments to be completed at the end of the year instead of requiring them within 30 days of a change or modification.

The rule does not require the installation of new metering devices and allows for alternative methods of measuring withdrawals to be approved by the department. The fiscal note addresses differing options including the costs required to hire a professional consultant to assist with the development of a measurement method. The fiscal note states that consultant costs will vary and may range between \$500 and \$2000.

GENERAL

1. From Wisconsin Paper Council: *Do facilities that have previously registered with the department need to re-register once the new rule takes effect? We urge that re-registration not be required in this situation, although it may be appropriate to ask for additional information.*

Department Response: Currently registered facilities will be required to log into the new registration system and supply any missing information from the original registration.

2. From Wisconsin Paper Council: *The registration submittal must include "the uses made of the water" and an amendment is required when changes or modifications are made to "the uses made of the water." Our understanding of the information being sought is the general use of the water, such as papermaking or cooling or irrigation, not every internal use of water within the papermaking process. In order to prevent the need for amendments every time a minor change in use is made, we suggest that the word "general" be inserted in front of "uses" in both places in the rule.*

Department Response: An amendment would only be required if the water use changes. Water uses are broken down into general codes. For example, there is currently only one code for industrial paper manufacturing so internal changes to the process would not require a change in water use.

3. From Wisconsin Paper Council: *NR 856.30(2) refers to both a 30-day average and a monthly average. It appears that the intent is for these to be two different things and that "monthly" refers to a calendar month. Is this correct? We would support this interpretation.*

Department Response: That is the correct interpretation.

4. From Wisconsin Paper Council: *The same paragraph requires reports to be submitted by March 1 of every year. We are not sure why March 1 is such a popular reporting deadline (SARA, air emissions inventory, greenhouse gas reporting, hazardous waste reporting, etc.), but our members would very much appreciate a later deadline, such as April 1, to allow workload to be spread out.*

Department Response: The deadline of March 1 was chosen to be consistent with the high capacity well reporting requirements in NR 820. The department did not make any changes to this date.

5. From Wisconsin Paper Council: *The wording in NR 856.30(2)(c) and (d) is confusing. Both reference withdrawal from a single property "or a public water supply...". It reads as though reporting of water taken from a public water supply must be reported, even though water taken from a public water supply would not be covered by the Compact or by this rule. It appears that the intent was to cover a public water supply system, not someone taking water from a public water supply system. We suggest simply using the same language here as is used in NR 856.11.*

Department Response: The department modified the language in s. NR 856.30(2) to address this comment.

6. From Wisconsin Paper Council: *NR 856.30(2)(d) specifies that water loss and consumptive use estimations and calculations follow procedures in department rules and guidelines. Our understanding is that the department will propose a rule addressing these estimation and calculation procedures later this year. When that rule is developed, it is important that the use of industry-specific procedures be allowed and that a "one size fits all" approach not be followed. For example, we have previously submitted to the department a document prepared by the National Council for Air and Stream Improvement, Inc. entitled Estimating Water Consumption at Pulp and Paper Mills (Technical Bulletin #946, February 2008). We urge that this document and similar information be allowed on a site-specific basis.*

Department Response: The department modified s. NR 856.30(2) to state that water loss from consumptive use is to be calculated according to NR 142. The methods for calculating consumptive use are not addressed by this rule.

7. From Wisconsin Paper Council: *NR 856.31 specifies procedures for measuring withdrawals. Some mills may have systems in place that meet one of the specified methods, but some may not. NR 856.31(1)(a)5. provides for the use of alternative methods and monitoring frequencies. It is important that this provision be interpreted broadly and that it not be used to force metering. Even if a paper mill does not have one of the specified measurement methods in place, the mills typically measure water*

use at other parts of the process in sufficient detail to accurately determine withdrawal amounts. This type of back-calculation should be allowed.

Department Response: The rule allows for site specific methods for measuring, which may include back calculating.

8. From the Community of Environmental Groups: *All withdrawals at or greater than 100,000 gallons per day (gpd) must be registered in accordance with Section 4.3 of the Compact. The proposed rule clearly requires registration of such existing withdrawals and of new withdrawals at or greater than 100,000 gpd. But it is unclear whether a person with an existing withdrawal that is increased to at or greater than 100,000 gpd is covered. This is clarified by adding to NR 856.11(1) a new subsection (c), with existing subsection (c) becoming subsection (d): (c) Any person who proposes to increase an existing withdrawal from the waters of the state using a water supply system or systems on one property or a public water supply to a capacity to withdraw an amount averaging 100,000 gallons per day or more in any 30-day period.*

Department Response: The department added language to s. NR 856.11 to correct the missing applicability.

9. From the Community of Environmental Groups: *WDNR's proposed registration and reporting rule requires registration and reporting by all diverters and by existing withdrawers and those who propose withdrawing with capacities of 100,000 gallons per day or more in any 30-day period. Section 281.346 (1) (y) of Wisconsin law defines "withdraw" to mean "to take water from surface water or groundwater." The registration and reporting rule, with one exception, does not include water systems who do not "withdraw" water from a surface or groundwater but purchase water on a wholesale basis from another system. The only members of that group the rule includes are those that divert. WDNR will need to know if a diverter is a withdrawer or a wholesale purchaser to keep from double-counting withdrawals.*

Department Response: The department concurs with the comment and will track this information to avoid double counting.

10. From the Community of Environmental Groups: *The consumptive use data required in NR 856.30 (2) (d) asks for estimated or actual consumptive use from reporting public water supplies. The definition of public water supply in this rule does not include the systems of wholesale purchasers (consecutive users), so their consumptive use would not be reported, except for diverters, leaving a gap in statewide consumptive use data. The ratio of consumptive use to withdrawal for public water supplies selling wholesale will be distorted. Public water supplies who sell on a wholesale basis typically do not have the information needed to report the consumptive use of their wholesale customers.*

Wholesale purchasers could be required to register and report separately, thus capturing all consumptive use data. DNR would need to segregate the water source numbers for wholesale purchasers from the water withdrawal numbers of the wholesale sellers to avoid double-counting. And it would need to ensure that the wholesale sellers report total withdrawals, not just the portion of withdrawal utilized in their public water supply retail system, to avoid under-reporting of withdrawals. Depending upon how that separation is to be accomplished, it might require DNR to have information about all wholesale purchaser/seller relationships.

An alternative to filling the consumptive use data gap is to calculate a consumptive use factor for all reporting entities, and apply it to the amount of water purchased by wholesale purchasers.

Department Response: There is no statutory authority to require wholesale customers of water withdrawers to report information. Alternate measures, including the one suggested, will have to be used to fill the data gaps for consumptive use.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCE BOARD
CREATING RULES

The Wisconsin Natural Resource Board proposes an order to repeal sections NR 142.03 (1), (2), and (3) and to create chapter NR 856 relating to the registration and reporting process for water withdrawals and affecting small business.

DG-25-10

Analysis Prepared by the Department of Natural Resources

1. **Statutes Interpreted:** Sections 281.343(4), 281.346(3), (7), and (14), Stats.
2. **Statutory Authority:** Sections 227.11(2)(a), 281.346(3), Stats.
3. **Explanation of Agency Authority:** Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Section 281.346(3)(b), Stats., authorizes the Department to promulgate rules to establish information requirements for statewide water withdrawal registration and reporting.

4. **Related Statute or Rule:** Wisconsin Statutes Sections 30.18, 281.34, 281.343, 281.344, 281.346, 281.348, 281.35 and the following rules under development: Water Conservation and Efficiency, Water Use Permitting, Water Use Fees, Water Use Public Involvement, Water Loss from Consumptive Uses, and Water Supply Service Area Plans.
5. **Plain Language Analysis:** This rule rescinds a portion of an existing rule related to registration of water withdrawals and creates a new rule that clarifies and further defines new statewide statutory requirements for withdrawals of waters of the state and diversions of water from the Great Lakes Basin. The new law requires the following:
 - Registration for any person who has or proposes to have a water supply system with the capacity to withdraw 100,000 gallons per day or more in any 30-day period or who diverts water in any amount from the Great Lakes Basin.
 - Annual reporting for any person who makes a withdrawal in excess of 100,000 gallons per day or more in any 30-day period or who diverts any amount from the Great Lakes Basin.

The rule sets forth definitions, procedures and information requirements for registrations, procedures for amending and terminating registrations, methods for measuring withdrawals, and procedures for annual reporting.

6. **Federal Regulatory Analysis:** There are no comparable federal regulations pertaining to water withdrawals. However, in passing the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact), each of the Great Lakes states now has similar regulations requiring the registration and permitting of certain levels of water withdrawals and diversions from the Great Lakes Basin.

7. Comparison with Rules in Adjacent States:

The following table compares regulatory requirements for water withdrawals in adjacent states.

	Wisconsin	Illinois	Iowa	Michigan	Minnesota
Registration	Registration is required for persons with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period.	An allocation permit is required for withdrawals from the Lake Michigan Basin.	Water use permits are required of any person or entity that withdraws at least 25,000 gallons in a 24-hour period during any calendar year.	Registration is required for a new withdrawal averaging over 100,000 gallons per day in any 30-day period or an increase averaging over 100,000 gallons per day in any 30-day period beyond the baseline capacity of a withdrawal.	Water Use permits are required for withdrawals greater than or equal to 10,000 gallons per day or 1 million gallons per year from surface or groundwater.
Reporting	Monthly water withdrawal volumes are reported annually by March 1 for withdrawals averaging 100,000 gallons per day or more in any 30-day period.	Annual reporting is required for all withdrawals from the Lake Michigan basin and statewide for withdrawals over 100,000 gallons per day.	Monthly water withdrawal volumes are reported by all water use permit holders annually by January 31.	Monthly water withdrawal volumes are reported by all registrants annually by April 1.	Monthly water withdrawal volumes are reported by all water use permit holders annually by February 15.

8. Summary of the Factual Data and Analysis that Support the Proposed Rule: Published scientific literature and manuals, including U.S. Department of the Interior Bureau of Reclamation's "Water Measurement Manual, Third Edition", prepared cooperatively by U.S. Government agencies and "Groundwater and Wells, Second Edition", 1989, written by Fletcher Driscoll were used as the basis for developing the withdrawal measurement standards. Existing state statutes, department rules, and department procedures were used to guide the development of the registration and reporting process.

9. Analysis and Supporting Documentation in Support of the Determination of the Rule's Effect on Small Business: Any person with a water supply system with the capacity to make a withdrawal from the waters of the state of 100,000 gallons per day is required to register. In addition, any person who makes a withdrawal averaging 100,000 gallons per day or more in any 30-day period must also report their water withdrawals to the department annually. To comply, small businesses follow the same requirements as other persons who withdraw water. The registration and reporting requirements are straightforward and can be accomplished by most individuals with no specific professional background.

10. Effect on Small Business: This rule will affect small businesses that supply their own water with water supply systems that have the capacity to withdraw over 100,000 gallons per day. Small businesses, like other entities that are affected by this rule, will have to

determine the amount of water used on a monthly basis and report that water use annually. Small businesses that receive water solely from a public water supply will not be impacted by this rule. Specific standards will provide clarity and consistency in the registration and reporting process.

11. Agency Contact Person:

Kristy Rogers, Water Supply Specialist
Wisconsin Department of Natural Resources
Bureau of Drinking Water & Groundwater
(608) 266-9254
Kristy.Rogers@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission: Comments are to be submitted to Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 by July 7, 2010.

SECTION 1. Section NR 142.03(1), (2), and (3) are repealed.

SECTION 2. Chapter NR 856 is created to read:

**CHAPTER NR 856
WATER USE REGISTRATION AND REPORTING**

SUBCHAPTER I– GENERAL PROVISIONS

- NR 856.10 Purpose
- NR 856.11 Applicability
- NR 856.12 Definitions
- NR 856.13 Determining Withdrawal Capacity
- NR 856.14 Responsible Parties
- NR 856.15 Open Records Requests and Water Use Information
- NR 856.16 Enforcement

SUBCHAPTER II - REGISTRATION

- NR 856.20 Procedures
- NR 856.21 Amendments
- NR 856.22 Terminations

SUBCHAPTER III – RECORDKEEPING AND REPORTING

- NR 856.30 Measurement and Reporting Requirements
- NR 856.31 Measurement Methods and Frequency

SUBCHAPTER I – GENERAL PROVISIONS

NR 856.10 Purpose. The purpose of this chapter is to implement s. 281.346(3), Stats., by establishing requirements for registering water withdrawals and collecting and reporting of accurate water withdrawal data to support management of the state's water resources.

NR 856.11 Applicability. (1) Unless exempted under sub. (2), this chapter applies to the following persons regardless of whether the activity is permitted, approved, or otherwise authorized under other regulatory authority of the department:

(a) Any person who proposes to begin a withdrawal from the waters of the state using a water supply system or systems on one property, or a public water supply, with the capacity to withdraw an amount averaging 100,000 gallons per day or more in any 30-day period.

(b) Any person who proposes to increase the capacity of a water supply system or systems on one property, or a public water supply, so that it will have the capacity to withdraw an amount averaging 100,000 gallons per day or more in any 30-day period.

(c) Any person who on July 1, 2009 had a water supply system or systems on one property, or a public water supply, with the capacity to withdraw from the waters of the state an amount averaging 100,000 gallons per day or more in any 30-day period.

(d) Any person who proposes to begin a diversion on or after December 8, 2008 or who had a diversion on December 8, 2008.

(2) This chapter does not apply to withdrawals for any of the following purposes:

(a) To supply vehicles, including vessels and aircraft, for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

(b) To use in a noncommercial project that lasts no more than three months for fire fighting, humanitarian, or emergency response purposes.

NR 856.12 Definitions. In this chapter:

(1) "Consumptive use" has the meaning specified in s. 281.346(1)(e), Stats.

Note: Section 281.346(1)(e), Stats., defines "consumptive use" to mean "a use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes."

(2) "Continuous water use" means a water use that is intended to be uninterrupted through time except for short periods such as for maintenance and because of power outages.

(3) "Department" means the department of natural resources.

(4) "Diversion" has the meaning specified in s. 281.346(1)(h), Stats.

Note: Section 281.346(1)(h), Stats., defines "diversion" to mean "a transfer of water from the Great Lakes basin into a watershed outside the Great Lakes basin, or from the watershed of one of the Great Lakes into that of another, by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker except that 'diversion' does not include any of the following: 1. The transfer of a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed. 2. The transmission of water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin. 3. The transfer of bottled water from the Great Lakes basin in containers of 5.7 gallons or less."

(5) "Great Lakes basin" has the meaning specified in s. 281.346(1)(je), Stats.

Note: Section 281.346(1)(je), Stats., defines "Great Lakes basin" to mean "the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec, within the jurisdiction of the parties."

(6) "Intermittent water use" means a water use that starts and stops irregularly or regularly through time.

(7) "One property" has the meaning specified in s. NR 812.07(68).

Note: Section NR 812.07(68), Wis. Adm. Code, defines "one property" to mean "all contiguous land controlled by one owner, lessee, or any other person having a possessory interest. Lands under single ownership bisected by highways or railroad right-of-ways are considered contiguous."

(8) "Owner," for water supply systems other than public water supply systems, means a person who owns property on which a water supply system is located or proposed to be located or the designated representative of such a person. For public water supply systems, owner means a person who owns the public water supply or designated representative of such a person.

(9) "Person" has the meaning specified in s. 281.346(1)(nm), Stats.

Note: Section 281.346(1)(nm), Stats., defines "person" to mean "an individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government."

(10) "Property" has the same meaning as "one property," as specified in sub. (7).

(11) "Public water supply" has the meaning specified in s. 281.346(1)(pm), Stats.

Note: Section 281.346(1)(pm), Stats., defines "public water supply" to mean "water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers."

(12) "Source" means an individual location where water is withdrawn from groundwater or surface water, such as a well or surface water intake.

(13) "Water loss" has the meaning specified in s. 281.346(1)(wm), Stats.

Note: Section 281.346(1)(wm), Stats., defines "water loss" to mean "the amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of a diversion or consumptive use or both."

(14) "Water supply system," has the meaning specified in s. 281.346(1)(wp), Stats.

Note: Section 281.346(1)(wp), Stats., defines "water supply system", when not preceded by "public", to mean "one of the following: 1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used. 2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed."

Note: The water supply system includes all points of intake of water into a water supply system.

(15) "Waters of the state" has the meaning specified in s. 281.01(18), Stats.

Note: Section 281.01(18), Stats., defines "waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction."

(16) "Well" has the meaning specified in s. 281.34(1)(h), Stats.

Note: Section 281.34(1)(h), Stats., defines "well" to mean "any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface and is constructed for the purpose of obtaining groundwater."

(17) "Withdraw" has the meaning specified in s. 281.346(1)(y), Stats.

Note: Section 281.346(1)(y), Stats., defines "withdraw" to mean "to take water from surface water or groundwater."

(18) "Withdrawal" has the meaning specified in s. 281.346(1)(z), Stats.

Note: Section 281.346(1)(z), Stats., defines "withdrawal" to mean "the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water."

NR 856.13 Determining Withdrawal Capacity. (1) The withdrawal capacity for a property is the total capacity in gallons per day from all water sources on the property.

Note: The withdrawal capacity may not necessarily be the same as the approved maximum daily withdrawal set forth by another department approval or permit, such as a high capacity well approval or a permit issued under s. 30.18, Stats.

(2) The withdrawal capacity for a public water supply is the total capacity from all water sources in the system.

(3) The capacity of individual water sources shall be one of the following:

(a) For flowing sources, the maximum flow rate.

(b) For pumped sources, the maximum hydraulic capacity of the most restrictive component of the water supply system. If the most restrictive component is a pump, the maximum capacity is determined based on the pump curve at the lowest system pressure setting.

NR 856.14 Responsible Parties. (1) The person responsible for registering, reporting, amending, or terminating registrations as required under this chapter is one of the following:

(a) For water supply systems, the owner of the property on which the water supply system is located.

(b) For public water supply systems, the owner of the public water supply system.

NR 856.15 Open Records Requests and Water Use Information. (1) The locations of withdrawals and diversions are sensitive information that may impact domestic security.

(2) Open records requests received by the department under ss. 19.21 to 19.39, Stats., that request information on the locations of withdrawals or diversions may be subject to greater

scrutiny by the department because of domestic security concerns, as allowed under s. 281.346(3)(cm), Stats. The department may request any of the following with respect to open records requests seeking information on the locations of withdrawals or diversions, in order to address domestic security concerns:

- (a) That the request be put in writing.
 - (b) The name, mailing address, telephone number, and email address of the requester and the company or organization that the requester represents.
 - (c) The specific information requested.
 - (d) The reason the information is requested and how it will be used.
- (3) In considering the public's interest in domestic security when reviewing requests submitted under sub. (2), the department may consider guidance and information from state and federal agencies and organizations with responsibility for domestic security and may place conditions on the use of the information, or may provide the requested information in a different format, when necessary to protect the public's interest in domestic security. The department shall explain why conditions or special formats are necessary to protect the public's interest in domestic security in its response to the requester.
- (4) Water use information collected by the department shall be provided to the public in an easily accessible form such as a report or database summary, at least annually. Information provided by the department under this subsection shall not include the following information:
- (a) The registrant's personal information except for the registrant's name; and
 - (b) Location information at a scale more specific than the public land survey section level.

NR 856.16 Enforcement. (1) Violations of this chapter may be prosecuted by the department under s. 281.346(14), Stats.

(2) Any violation of these rules shall be treated as a violation of the statutes they interpret or under which they are promulgated.

(3) Persons violating this chapter are subject to penalties as specified in s. 281.346(14), Stats.

SUBCHAPTER II – REGISTRATION

NR 856.20 Procedures. (1) Any person proposing to begin a withdrawal or diversion to which this chapter applies shall register with the department prior to withdrawing or diverting water.

(2) Any person who on July 1, 2009 had a water supply system to which this chapter applies shall register within six months after the effective date of this subsection [legislative reference bureau inserts date].

(3) Registration is required for each property and each public water system.

(4) A person shall register in the manner prescribed by the department and shall provide all of the following information:

(a) The name, mailing address, telephone number, and email address of the owner and operator.

(b) The locations and sources of the withdrawal or diversion.

(c) The daily withdrawal capacity of the water supply system, the daily withdrawal capacity from each source and, for water supply systems located in the Great Lakes Basin, an estimate of the maximum hydraulic capacity of the most restrictive component of the water supply system or systems.

(d) An estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period.

(e) The uses made of the water.

(f) The places at which the water is used.

(g) The places at which any of the water is discharged.

(h) Whether the water use is continuous or intermittent.

(i) Whether the person holds an approval or permit under s. 30.18, 281.35, 283.31, Stats., or other statutes.

(j) A map showing the location of the property or public water supply, sources, and discharges.

Note: The department is developing an Internet based system that will allow registrants to identify required locations using an online mapping tool.

(5) The department shall not accept a registration until it is complete. A complete registration contains all of the information identified in sub. (4).

(6) The department shall notify owners if the registration is incomplete or if it has been accepted within 30 calendar days after the receipt of the registration.

NR 856.21 Amendments. (1) A registration amendment is required when changes or modifications are made to any of the following:

- (a) Property ownership or property boundaries.
- (b) The name, mailing address, telephone number, and email address of the owner and operator, if applicable.
- (c) The locations and sources of the withdrawal or diversion.
- (d) The daily withdrawal capacity of the water supply system or individual source or sources.
- (e) The uses made of the water.
- (f) The places at which the water is used.
- (g) The places at which any of the water is discharged.

(2) Except for changes in property ownership, the owner shall amend the registration in the manner prescribed by the department by March 1 of the year following the change or modification. For changes in property ownership, the new owner shall amend the registration within 30 calendar days after the change.

Note: Registration amendments may be completed as part of the annual reporting process.

(3) An owner is not required to amend a registration when replacing equipment with equipment of the same capacity and operating parameters.

NR 856.22 Terminations. (1) An owner may terminate registration only when the withdrawal capacity of the water supply system or systems on one property or for a public water system is no longer at the level requiring registration under s. NR 856.11.

(2) One property or a public water system no longer has the withdrawal capacity at the level requiring registration under s. NR 856.11 when one of the following occurs:

(a) For flowing sources, the connection between the source or sources and the water supply system is physically eliminated or reduced in size permanently to below the level requiring registration under s. NR 856.11.

Note: Elimination of the physical connection may require filling of channels, filling and sealing of wells, removal of pipes or conduits, or re-routing flow around the water supply system or facility.

(b) For pumped sources, the connection between the source or sources and the water supply system is physically eliminated or reduced in size to below the level requiring registration under s. NR 856.11 and the pump or pumps are reduced in capacity to below the level requiring registration under s. NR 856.11 or are removed from the system permanently.

Note: Elimination of the physical connection may require filling of channels, filling and sealing of wells, or removal of pipes or conduits.

(3) An owner shall terminate the registration in the manner prescribed by the department by the end of the calendar year in which the water supply system is no longer at the capacity requiring registration under s. NR 856.11.

SUBCHAPTER III – RECORDKEEPING AND REPORTING

NR 856.30 Measurement and Reporting Requirements. (1) A person registered under this chapter shall determine the monthly volume of water withdrawn from the property or public water supply, or the monthly volume of water diverted, using methods and procedures set forth in s. NR 856.31.

(2) A person registered under this chapter that makes a withdrawal that averages 100,000 gallons per day or more in any 30-day period, or diverts any amount of water, shall annually report to the department the monthly volumes of the withdrawal or diversion. Reports shall be submitted to the department in the manner prescribed by the department by March 1 of every year and shall contain all of the following information about the previous year's withdrawals:

(a) Monthly volumes of withdrawal for each source on the property or in the public water supply and if applicable, the monthly volumes of diversion.

(b) The estimated volumes of each use made of the water.

(c) Method or methods used to measure the withdrawals or diversion.

(d) A statement advising the department if the withdrawal was at a level greater than or equal to 1,000,000 gallons per day for 30 consecutive days.

(e) Estimated or actual water loss from consumptive use. Water loss and consumptive use estimations and calculations shall follow the requirements of ch. NR 142.

(f) Method or methods used to determine water loss from consumptive use.

(3) Withdrawal information shall be made available to the department upon request.

(4) The owner shall maintain records of the withdrawal or diversion for a minimum of three years. Records include monthly volumes of withdrawal and, if applicable, diversion; methods used to measure or estimate the withdrawal or diversion; calibration records of meters; and any other pertinent documents necessary to calculate or estimate the withdrawal or diversion volume.

(5) When a property or portion of a property is transferred to another person, the previous owner shall provide copies of the records identified in sub. (4) to the new owner of the

property. The new owner shall report all withdrawals that occurred during the calendar year as required in sub. (2).

NR 856.31 Measurement Methods and Frequency. (1) Withdrawals shall be measured in accordance with the following methods:

(a) Sources that flow or are pumped at a rate of 70 or more gallons per minute shall be measured using one of the following methods:

1. Totalizing flow meter. Flow meters shall be read and documented at least once every month.

2. Pump operation is timed with an hour meter and the pumping capacity is used to calculate total pumpage. The operation time and pumping capacity shall be documented for each period of use.

3. Flow rate is measured using a weir. For sources with little or no flow rate variability, flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter. For sources with flow rate variability, flow rate shall be measured daily.

4. Flow rate is measured by discharge from a horizontal pipe. Flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter.

5. Alternative method and monitoring frequency that has been approved by the department.

(b) Sources that flow or are pumped at a rate of less than 70 gallons per minute shall be measured using one of the following methods:

1. Totalizing flow meter. Flow meters shall be read and documented at least once every month.

2. Pump operation is timed with an hour meter and the pumping capacity is used to calculate total pumpage. The operation time and pumping capacity shall be documented for each period of use.

3. Flow rate is measured using a weir. For sources with little or no flow rate variability, flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter. For sources with flow rate variability, flow rate shall be measured daily.

4. Flow rate is measured by discharge from a horizontal pipe. Flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter.

5. Estimate based upon time to fill a container of known volume. Flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter and if the flow is not continuous, hours of operation shall also be recorded.

6. Alternative method and monitoring frequency that has been approved by the department.

(2) The monthly volume of water withdrawn shall not include the volumes of water that are reused on the property or within the public water system.

(3) Meters and measuring devices shall be maintained and calibrated as directed by the manufacturer.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 10, 2010.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

(SEAL)

By _____

Matthew J. Frank, Secretary

Fiscal Estimate — 2009 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DG-25-10

Subject
 Water Use Registration and Reporting Rule

Fiscal Effect

- State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

- Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others Water Utilities
 School Districts WTCS Districts

- Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.370 (4)(cg), 20.370 (4)(ai)

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary

This rule clarifies and further defines new statewide statutory requirements for withdrawals of waters of the state and diversions of water from the Great Lakes Basin. The new law requires the following:

- Registration for any person who has or proposes to have a water supply system with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period or who diverts water in any amount from the Great Lakes Basin.
- Annual reporting for any person who makes a withdrawal averaging 100,000 gallons per day or more in any 30-day period or who diverts any amount from the Great Lakes Basin.

State Fiscal Effect

Annual Costs:

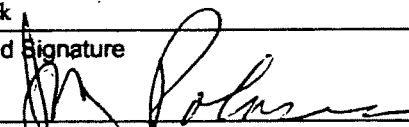
All costs that the Department will incur are the result of the registration and reporting requirements enacted in 2007 Wisconsin Act 227.

Annual costs to the Department are expected to increase by an estimated \$145,700 for salary, supplies, and related expenditures. This estimate is based upon the following expected costs associated with administering the new requirements:

- 1) Salary and fringe for 2.0 FTEs classified as Water Supply Specialists at an estimated cost of approximately \$136,200 [2,080 hours x \$32.73/hour (salary and fringe) x 2 FTE]. The FTEs will provide compliance assistance, develop information and education materials, review and accept registration submittals, review reporting information, prepare summary reports and analysis, investigate complaints and non-compliance with the rules, and maintain the data system.
- 2) Travel and supply costs of \$6,000 (\$3,000 x 2 FTE). The travel will include field investigations of complaints and non-compliance and travel associated with providing training and customer service to the regulated community.

Long-Range Fiscal Implications

No long range fiscal implications are expected.

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Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
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Assumptions Used in Arriving at Fiscal Estimate – Continued

3) Database/IT costs of \$3,500 (50 hours x \$70/hour) for an outside contractor to maintain the data system and online registration and reporting system.

One-Time Costs:

One time costs are estimated to be \$128,650. These costs are for developing a database and online system to accept registration and reporting information. This includes computer contractor costs of \$44,900 (1 IS contractor @ 350 hours x \$70/hour and 1 GIS contractor @ 300 hours x \$68/hour) and DNR staff time at a cost of \$83,750 (1,675 hours x \$50/hour average salary and fringe). DNR staff time is required from a GIS Coordinator, IS Systems Developer, and Water Supply Specialist-Advanced.

Local Government Fiscal Impact

The new requirements will impact local units of government that have or propose a water supply system that withdraws water at the level regulated by the new rule. The fiscal impact is expected to be minimal, since measuring and reporting water withdrawal information is already required by other Department programs. The additional reporting requirement of the new rule may be accomplished by the withdrawer and is expected to take, on average, less than 2 hours per year. Department staff are committed to eliminating duplicative reporting requirements with the development of new data systems.

Private Sector Fiscal Impact

A. Existing Withdrawers

The fiscal impact on persons in the private sector that have existing withdrawals regulated by the new rule is expected to be minimal. Most existing withdrawers are already required to measure and report withdrawal information to the Department. The additional reporting requirement of the new rule may be accomplished by the withdrawer and is expected to take, on average, less than 2 hours per year. Department staff are committed to eliminating duplicative reporting requirements with the development of new data systems.

For existing withdrawers that are not currently required to measure and report their withdrawals, the fiscal impact is expected to be the same as for new withdrawers, as explained below.

B. New Withdrawers

The fiscal impact on persons in the private sector that are starting new withdrawals is not expected to be significant. Initial costs include withdrawal measurement and registration. The rule provides options for measuring withdrawals that vary in cost. There are options that may be completed by the withdrawer at little to no cost. Other options require the purchase of a meter and some options—for example, measuring flow through a weir, may require hiring a professional consultant. Standard meters range in cost from \$400 to \$5,000. Consultant costs vary and may range between \$500 and \$2,000.

Completing the initial registration is expected to take, on average, less than 2 hours and may be completed by the withdrawer. Withdrawers that are hiring consultants or contractors, such as well drillers, as part of their project may choose to have them also complete the registration.

Annual costs are expected to be minimal. Documenting the volumes of withdrawal by month and then reporting the information annually to the Department is expected to take, on average, less than 2 hours per year and may be completed by the withdrawer.

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DG-25-10

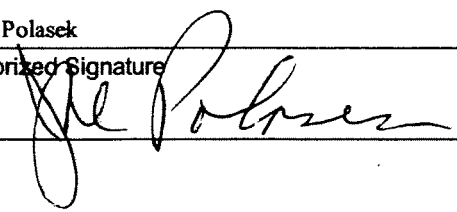
Subject
 Water Use Registration and Reporting Rule

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$	\$
Net Change in Revenues	\$	\$

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